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LETTER DATED 22 OCTOBER 1998 FROM THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991 ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to bring the following matter to the attention of the Security Council.

Recent efforts to find a peaceful solution to events in Kosovo have resulted in agreements between the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Organization for Security and Cooperation in Europe and the North Atlantic Treaty Organization. The President of Serbia has also issued a statement on the principles of a political solution and on a timetable framework. While the agreements commit the Government of the Federal Republic of Yugoslavia to accept an international verification system in Kosovo, they contain no provisions regarding the obligation of the Federal Republic of Yugoslavia to cooperate with the International Tribunal for the Former Yugoslavia. Moreover, it would appear that the statement by the President of Serbia reserves to the domestic judicial system of the Federal Republic of Yugoslavia the right to investigate, prosecute and try offences committed in Kosovo that may fall within the jurisdiction of the International Tribunal.

This is of particular concern to the International Tribunal considering the history of its relationship with the Federal Republic of Yugoslavia, which is characterized by near-total non-compliance. Thus, I respectfully submit that it is imperative that the competence of the International Tribunal be unambiguously reaffirmed and that the obligation of the Government of the Federal Republic of Yugoslavia to cooperate with it is made an explicit part of any resolution of the situation in Kosovo.

As you are aware, in September of this year, I wrote to the Security Council and subsequently briefed its members on the continuing refusal of the Government of the Federal Republic of Yugoslavia to cooperate with the International Tribunal by failing to arrest and transfer to the custody of the International Tribunal three persons indicted by the International Tribunal. Mile Mrkšic, Miroslav Radić and Veselin Šljivančanin were indicted on

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7 November 1995 for the murder of 260 unarmed men following the fall of the city of Vukovar in November 1991. I recalled that in March 1996, international warrants of arrest were sent to all States, and that in April 1998, my predecessor reported to the Security Council the failure by the Federal Republic of Yugoslavia to arrest the three men. Today, these men remain at liberty and are believed to be residing in Serbia. Moreover, that Government has ignored the Security Council's decision that all States should adopt legislation necessary to implement the provisions of resolution 827 (1993) and the statute of the International Tribunal. It stands alone among the signatories to the General Framework Agreement for Peace in Bosnia and Herzegovina in neither having adopted such legislation, nor having transferred to the International Tribunal's custody those indictees on its territory. The Federal Republic of Yugoslavia has thus failed to comply with resolution 827 (1993) and the statute of the International Tribunal, in particular article 29 thereof.

With respect to events in Kosovo, the Security Council has confirmed on two occasions that the Federal Republic of Yugoslavia is bound under international law to comply with the International Tribunal. Resolution 1160 (1998), passed in March 1998, inter alia, noted that the authorities of the Federal Republic of Yugoslavia are so bound. In resolution 1199 (1998), the Security Council reiterated that obligation and called upon the Federal Republic of Yugoslavia and other concerned parties to cooperate fully with the International Tribunal.

I am, therefore, gravely concerned that the agreements concluded on the situation in Kosovo lack an explicit recognition of the obligation of the Federal Republic of Yugoslavia towards the International Tribunal. While they do require, inter alia, the Federal Republic of Yugoslavia to comply with the provisions of resolution 1199 (1998), there is no express commitment from the Government of the Federal Republic of Yugoslavia to cooperate with the International Tribunal. In this regard, I note with alarm that, in his statement, the President of Serbia declares that "no person will be prosecuted in State courts for crimes related to the conflict in Kosovo except for crimes against humanity and international law". This expression of the view of the Government of Serbia does not include a reference to the International Tribunal. I fear, therefore, that it represents an implicit attempt to deny the primacy of the International Tribunal and to disregard the legal requirement that Serbia, as a part of the Federal Republic of Yugoslavia, should facilitate the work of the International Tribunal.

While I hope that the Government of the Federal Republic of Yugoslavia will now cease its pattern of non-cooperation, I fear that in the absence of a specific commitment to obey the will of the Security Council, the International Tribunal will continue to experience further difficulties with the Government of the Federal Republic of Yugoslavia. In this regard, I note that since my address to the Security Council last month, the Federal Republic of Yugoslavia has taken no action to arrest the three indicted individuals referred to above.

The obligation to cooperate and comply is incontrovertible. It is not subject to alteration, negotiation or abrogation by any individual or Government. The Security Council, as the body with the authority to create the International Tribunal, is the only body that may revise or rescind this obligation. The Security Council has not done so, and thus the obligation

remains. Considering resolution 1199 (1998), it is clear that the Federal Republic of Yugoslavia may not impede the work of the Prosecutor as she carries out investigations within Kosovo. It is also clear that the Federal Republic of Yugoslavia must take all other action that is necessary to facilitate the work of the International Tribunal, including the arrest of indicted persons.

All States are subject to international law. All States must respect and ensure respect for their international obligations. In an era characterized by an increased emphasis on the human rights of individuals, the continued flouting by the Federal Republic of Yugoslavia of the will and the law of the international community jeopardizes all efforts to bring peace to the peoples of the former Yugoslavia. For these reasons, I respectfully urge the Security Council to take such action as is necessary to vindicate the status and primacy of the International Tribunal and to ensure that compliance by the Federal Republic of Yugoslavia is now forthcoming.

(Signed) Gabrielle Kirk MCDONALD
President